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 COUNTY OF ALAMEDA, GREGORY J.
 AHERN, RAYMOND P. KELLY, and
 DEREK D. THOMS

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

JUVENTINO RODARTE,
 Plaintiff,

vs.

ALAMEDA COUNTY, GREGORY J.
 AHERN, Alameda County Sheriff, sued in his
 individual capacity, RAYMOND P. KELLY,
 Alameda County Deputy Sheriff's Sergeant
 sued in his individual capacity, DEREK D.
 THOMS, Alameda County Deputy Sheriff, sued
 in his individual capacity,
 Defendants.

Case No.: CV 14-00468 KAW

**COUNTY OF ALAMEDA'S ANSWER TO
 COMPLAINT FOR DAMAGES**

DEMAND FOR JURY TRIAL

Complaint Filed: January 31, 2014

COMES NOW defendant COUNTY OF ALAMEDA (hereafter "defendant") and for its
 answer to the plaintiff's "Complaint for Damages" answers as follows:

1. Answering the allegations of paragraphs 1, 2 and 3, these paragraphs contain legal
 conclusions, rather than factual allegations requiring a response by defendants. The County does
 not dispute that the allegations currently support jurisdiction and venue in this court.

2. Answering the allegations of paragraphs 4, defendant lacks sufficient information
 and belief upon which to admit or deny such allegations and on that basis denies those allegations.

1 3. Answering the allegations of paragraphs 5 through 8, defendant admits that it is a
2 public entity, and admits that at the time of the incidents in this case defendants Ahern, Kelly and
3 Thoms were employed by defendant, but the remainder of the allegations contain legal conclusions
4 which require no response. To the extent the court disagrees, defendant denies any such legal
5 conclusions if construed as factual allegations.

6 4. Answering the allegations of paragraph 9, defendant denies that it knew at the time
7 of the incident that plaintiff resided in Apartment 17 of 1510 164th Avenue in San Leandro.
8 Defendant does not recall the configuration of the apartment building located at the address above,
9 but admits that there were at least two floors, and otherwise lacks sufficient information and belief
10 upon which to admit or deny the remaining allegations and on that basis denies those allegations.

11 5. Answering the allegations of paragraph 10, defendant admits these allegations and
12 furthermore alleges that, per the police report, Mr. Furtado also reportedly stated that he had heard
13 a lot of movement outside of his apartment, that he was fearful of an intruder, and reportedly stated
14 that someone had tried to break into his residence six months earlier.

15 6. Answering the allegations of paragraph 11, defendant denies these allegations as
16 Mr. Furtado reported to police that he heard someone outside.

17 7. Answering the allegations of paragraph 12, defendant admits these allegations.

18 8. Answering the allegations of paragraph 13, defendant admits that defendant Thoms
19 had his service dog, Zina, on a six foot lead when he searched the apartment for the believed
20 intruder reported by Mr. Furtado. Defendant lacks sufficient information or belief to admit the
21 remainder of the allegations in this paragraph, and so denies those allegations, inasmuch as two
22 exterior gates, one of which was near Mr. Furtado's apartment, were noticed to be ajar that
23 evening (even though, reportedly, they were not supposed to be and/or were closed earlier), and
24 defendant is unsure which gate plaintiff is alleging police entered the apartment complex through
25 in search of the believed intruder.

26 9. Answering the allegations of paragraph 14, defendant admits that officers checked
27 the first floor of the apartment building for the believed intruder before moving to the second floor,
28 but defendant currently lack sufficient information or belief to admit or deny the remaining

1 allegations in this paragraph and on that basis denies these allegations.

2 10. Answering the allegations of paragraph 15, defendant admits that defendant Thoms
3 and Kelly and another officer walked up the stairs to the second floor with service dog Zina on
4 leash on the night of the incident, and denies any remaining allegations in this paragraph.

5 11. Answering the allegations of paragraph 16, defendant admits that a person, later
6 identified as defendant, was sitting on the floor in front of apartment 17 with his knees bent into
7 his chest, his head bent, and with his hands (and any objects in his hands) and head concealed
8 underneath a hood, and denies the remaining allegations of this paragraph.

9 12. Answering the allegations of paragraph 17, defendant currently lacks sufficient
10 information or belief as to the exact distance between the top of the second floor steps and the
11 location where plaintiff was seated, and so denies the allegations in this paragraph.

12 13. Answering the allegations of paragraphs 18 and 19, defendant lacks sufficient
13 knowledge or belief as to what plaintiff saw or felt at the time described in this paragraph,
14 inasmuch as plaintiff said nothing at the time in response to the officers' verbal statements, and on
15 that basis denies the remaining allegations.

16 14. Answering the allegations of paragraph 20, defendant admits these allegations.

17 15. Answering the allegations of paragraph 21, defendant denies these allegations in
18 that the officers' next move was not to "command[]" service dog Zina to "apprehend" plaintiff.

19 16. Answering the allegation of paragraphs 22 ad 23, defendant admits that, after
20 identifying themselves as police officers, when plaintiff failed to respond to or acknowledge the
21 officers' repeated commands to show his hands, which commands continued for over a minute, the
22 command was issued to Zina to apprehend plaintiff and Zina bit plaintiff on the left shin below the
23 knee.

24 17. Answering the allegations of paragraph 24, defendant lacks information or belief as
25 to what plaintiff felt at the time described in this paragraph, and so denies those allegations, and
26 denies that plaintiff lost consciousness inasmuch as he was observed thereafter to begin to
27 violently thrash about as the officers commanded him to place his hands behind his back.

28 18. Answering the allegations of paragraphs 25 and 26, defendant admits that deputy

1 Nelson moved in to handcuff plaintiff, and thereafter service dog Zina was commanded to release
2 her bite, which she immediately did.

3 19. Answering the allegations of paragraph 27, defendant admits that it was only after
4 plaintiff was handcuffed that officers discovered the metal object hidden in plaintiff's hands that
5 plaintiff failed to show officers in response to their repeated commands was keys, and not a
6 weapon.

7 20. Answering the allegations of paragraph 28, defendant denies the allegations of this
8 paragraph; plaintiff was treated by paramedics at the scene and then additionally taken to the
9 hospital for care.

10 21. Answering the allegations of paragraph 29, some statements in this paragraph
11 constitute legal conclusions which require no response, and as to any factual allegations, defendant
12 denies that no crime had been reported, and that the officers were present for reasons other in
13 response to a third party's report that a crime might be in the process of being attempted or
14 committed.

15 22. Answering the allegations of paragraph 30, defendant denies that the use of service
16 dog Zina was an "attack" but admits the remaining allegations.

17 23. Answering the allegations of paragraph 31, defendant admits these allegations.

18 24. Answering the allegations of paragraph 32, defendant denies on information and
19 belief the allegations of these paragraphs.

20 25. Answering the allegations of paragraph 33, defendant denies these allegations.

21 26. Answering the allegations of paragraphs 34, 35 and 36, defendant admits that
22 plaintiff was cited and released in the field for violation of P.C. 148(a)(1), and lacks current
23 information or belief as to the remaining allegations in these paragraphs.

24 27. Answering the allegations of paragraph 37, defendant admits (without waiving its
25 right to assert any legal challenges regarding this claim) that a claim form was submitted to the
26 County of Alameda on August 1, 2013, and that a letter was sent regarding the claim on November
27 25, 2013, but denies the remaining allegations of this paragraph, and specifically denies any legal
28 conclusions that may be asserted in this paragraph.

1 28. Answering the allegations of paragraphs 38, 39, and 40, defendant responds that
2 this paragraph contains legal conclusions which they dispute and which do not require a response,
3 and further respond that any factual allegations contained therein are denied.

4 29. Answering the allegations of paragraphs 41 through 44, 46, 48, 50, 52 through 58,
5 60 through 65, 67 through 70, 72 through 77, 80 through 84, 86 through 94, defendants asserts that
6 each paragraph contains or consists of legal conclusions which are disputed and which do not
7 require a response. To the extent a court finds any factual allegations in these paragraphs,
8 defendant either denies them or lacks information or belief as to any factual allegations and so on
9 that basis denies them.

10 30. Answering the allegations of paragraphs 45, 47, 49, 51, 59, 66, 71, 78, and 85, these
11 allegations incorporate by reference the allegations of certain other paragraphs set forth in the
12 complaint, and so defendants respond by incorporating by reference its answers to those individual
13 paragraphs referenced therein. Should the court determine that some other response is required,
14 defendants on information and belief deny the allegations of these paragraphs.

15 31. Answering the allegations of paragraphs 79, and 86, defendant admits that service
16 dog Zina is a police dog owned and/or utilized by the County, but otherwise denies the remaining
17 allegations of these paragraphs.

18 **SEPARATE AFFIRMATIVE DEFENSES**

19 AS A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE
20 UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION
21 THEREOF, this answering defendant alleges that the complaint fails to state claims upon which
22 relief can be granted.

23 AS A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE
24 UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION
25 THEREOF, this answering defendant is informed and believes and thereon alleges that plaintiff
26 was negligent in and about the activities alleged in the complaint; that said negligence contributed
27 and was a proximate cause of plaintiff's alleged injuries and damages, if any, or was the sole cause
28 thereof; and that if plaintiff is entitled to recover damages against defendant, then defendant prays

1 that the recovery be diminished or extinguished by reason of the negligence of plaintiff in
2 proportion to the degree of fault attributable to plaintiff.

3 AS A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE
4 UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION
5 THEREOF, this answering defendant alleges that plaintiff's claims are barred by the provisions of
6 the Eleventh Amendment to the United States Constitution.

7 AS A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE
8 UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION
9 THEREOF, this answering defendant alleges that the complaint, and each cause of action therein,
10 is barred because any detention, search and/or seizure of plaintiff by defendants or any of them
11 was supported by probable cause and was otherwise lawful, constitutional privileged and justified.

12 AS A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE
13 UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION
14 THEREOF, this answering defendant alleges that it had legal justification for all actions and
15 omissions alleged in said complaint and therefore the complaint and each and every cause of
16 action therein is barred.

17 AS A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE
18 UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION
19 THEREOF, this answering defendant is informed and believes and thereon alleges that the
20 complaint and each and every cause of action therein is barred because plaintiff failed to mitigate
21 his damages, if any there were.

22 AS A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE
23 UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION
24 THEREOF, this answering defendant alleges that any or all of its employees and/or agents is
25 immune from any liability and protected against the burden of litigation under the doctrine of
26 qualified immunity and the common law and statutory immunities protecting peace officers,
27 correctional officers, prosecutors and public officials, including without limitation those set forth
28 in Government Code sections 815, 815.2, 815.4, 818, 818.2, 818.7, 818.8, 820, 820.2, 820.21,

1 820.4, 820.6, 820.8, 821, 821.6, 822.2, 844.6, 845.2, 845.4, 845.6, 845.8, and 846.

2 AS AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE
3 UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION
4 THEREOF, this answering defendant alleges that it is immune from liability for exemplary
5 damages pursuant to provisions of section 818 of the California Government Code and by the
6 decision of the United States Supreme Court in *Newport v. Fact Concert, Inc.*, 453 U.S. 247.

7 AS A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE
8 UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION
9 THEREOF, this answering defendant alleges that its agents and/or employees were at all times
10 acting without malice, fraud or oppression, and in good faith and therefore are entitled to immunity
11 from suit.

12 AS A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE
13 UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION
14 THEREOF, this answering defendant alleges that at all times mentioned in the Complaint, each
15 defendant performed and discharged in good faith each and every obligation, if any, owed to
16 plaintiff.

17 AS AN ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE
18 UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION
19 THEREOF, this answering defendant alleges that at all times material to this action, each
20 defendant had reasonable cause to act and acted properly in valid law enforcement activities.

21 AS A TWELFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE
22 UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION
23 THEREOF, this answering defendant alleges that at all times relevant to plaintiff's complaint
24 herein, plaintiff knowingly, voluntarily and willingly consented to the search of his property and
25 person, if, in fact, any such search was performed.

26 AS A THIRTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
27 THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION
28 THEREOF, this answering defendant is informed and believes and thereon alleges that plaintiff

1 was comparatively at fault in the manner and style as set forth in the case of *Li v. Yellow Cab Co.*
2 (1975) 13 Cal.3d 804, and each defendant prays that any and all damages sustained by said
3 plaintiff be reduced by the percentage of his negligence.

4 WHEREFORE, this answering defendant prays as follows:

- 5 1. That plaintiff takes nothing by of his complaint and that this answering defendant
6 be dismissed hence;
- 7 2. For reasonable attorneys' fees;
- 8 3. For costs of suit incurred herein; and
- 9 4. For such other and further relief as the Court deems fit and proper.

10
11 **DEMAND FOR JURY TRIAL**

12 Defendant hereby demands a jury trial in this matter.

13
14 DATED: February 24, 2014

15 BOORNAZIAN, JENSEN & GARTHE
16 A Professional Corporation

17 By: /s/ Jill P. Sazama
18 JILL P. SAZAMA, ESQ.
19 Attorneys for Defendants
20 COUNTY OF ALAMEDA,
21 GREGORY J. AHERN, RAYMOND
22 P. KELLY, and DEREK D. THOMS

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CERTIFICATE OF SERVICE-ELECTRONIC CASE FILING
(28 U.S.C. §1746)

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 12th Street, Suite 1800, P. O. Box 12925, Oakland, California 94604-2925.

On the date indicated below, I caused a copy of **COUNTY OF ALAMEDA'S ANSWER TO COMPLAINT FOR DAMAGES**, and **DEMAND FOR JURY TRIAL** be served electronically to the following parties as required by the Court's Order Electronic Case Filing (ECF) Program:

Dan Siegel, Esq.
Jose Luis Fuentes, Esq.
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Oakland, CA 94612
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Attorneys for Plaintiff
JUVENTINO RODARTE

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Oakland, California, on February 24, 2014.


CARMEN KALT

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